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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/757,926	01/10/2001	Stuart Mandel Garland	47-10	8084

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EXAMINER

DUONG, THOMAS

ART UNIT PAPER NUMBER

2145

DATE MAILED: 05/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/757,926

Applicant(s)

GARLAND ET AL.

Examiner

Thomas Duong

Art Unit

2145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-2, 5, 7-8, and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 5, 7-8, and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

RD

DETAILED ACTION

Response to Amendment

1. This office action is in response to the applicants Amendment filed on December 27, 2004. Applicant amended *claims 1-2 and 7-8* and canceled *claims 3-4 and 9-10*. *Claims 1-2, 5, 7-8, and 11* are presented for further consideration and examination.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
3. *Claims 1-2, 5, 7-8 and 11* are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobata (US005845074A), in view of Thro et al. (US006147977A), and further in view of Chang et al. (US006292825B1).
4. With regard to *claims 1 and 7*, Kobata discloses,
 - *if the customer station is idle, delivering a message directly to the customer station;* (Kobata, col.2, lines 6-15; col.4, lines 24-33)Kobata discloses a *"smart internet delivery system"* capable of *"[ascertaining] whether or not the intended recipient's computer is busy or not"* (Kobata, col.2, lines 8-9) before sending information to the intended recipient's computer. According to Kobata, *"in one embodiment, the server periodically checks the*

'busyness' of the network and the end user's terminal prior to transmitting stored information to this user" (Kobata, col.2, lines 9-12).

- *if the customer station is busy receiving another message, storing the received message in storage associated with that precedence level;* (Kobata, col.2, lines 16-27)

Kobata teaches that, in the event of a "busyness" of the network and the end user's terminal, an "[indication] that the information which has been subscribed to is available through the utilization of an on-screen icon" (Kobata, col.2, lines 17-20). Hence, "all that is necessary [is] to click on the appropriate icon on the screen, at which time the information from the server which has been locally stored is opened and presented to the user" (Kobata, col.2, lines 22-25).

- *if the customer station is busy receiving said another message, notifying the customer that said message is being received by a system for storing received messages;* (Kobata, col.2, lines 16-27)

Kobata teaches that, in the event of a "busyness" of the network and the end user's terminal, an "[indication] that the information which has been subscribed to is available through the utilization of an on-screen icon" (Kobata, col.2, lines 17-20). Hence, "all that is necessary [is] to click on the appropriate icon on the screen, at which time the information from the server which has been locally stored is opened and presented to the user" (Kobata, col.2, lines 22-25).

- *subsequently, when the customer station is idle, delivering messages to the customer station from storage* (Kobata, col.2, lines 6-15; col.4, lines 24-33)

Kobata discloses a "smart internet delivery system" capable of "[ascertaining] whether or not the intended recipient's computer is busy or not" (Kobata, col.2,

lines 8-9) before sending information to the intended recipient's computer.

According to Kobata, *"in one embodiment, the server periodically checks the 'busyness' of the network and the end user's terminal prior to transmitting stored information to this user"* (Kobata, col.2, lines 9-12).

However, Kobata does not explicitly disclose,

- *determining a precedence level for a received message*
- *delivering messages to the customer station from storage of higher precedence level before delivering messages from storage of lower precedence level.*

Thro teaches,

- *determining a precedence level for a received message* (Thro, col.2, line 48 – col.3, line 67; col.4, lines 40-59)

Thro discloses a method *"that processes messages within a ... communications system based on originator priority and recipient priority"* (Thro, col.2, lines 49-51). Furthermore, *"the server attempts to provide notice of the message to the receiving party based on the message priority"* (Thro, col.2, line 66 – col.3, line 1) and *"in the event the receiving party is not available, the notice is stored in a database for later delivery, or forwarded to a surrogate of the receiving party"* (Thro, col.3, lines 4-6).

- *delivering messages to the customer station from storage of higher precedence level before delivering messages from storage of lower precedence level.* (Thro, col.7, lines 1-67)

Thro discloses that *"messages are not only prioritized for delivery to a specific device, but are sent to single device in a prioritized fashion such that the system is not operating in s FIFO (first-in-first-out) mode"* (Thro, col.7, lines 17-21) and

that *"the outputs are generated ... [according to the] message priority relative to other messages bound for current device choice; and message priority relative to all other messages"* (Thro, col.7, lines 39-44).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Thro with the teachings of Kobata to enhance Kobata's *"smart internet delivery system"*, which is capable of *"[ascertaining] whether or not the intended recipient's computer is busy or not"* (Kobata, col.2, lines 8-9) before sending information to the intended recipient's computer, by *"[allowing] for processing of messages based on [priorities, and more particularly], on originator priority and recipient priority"* (Thro, col.2, lines 26-27).

However, Kobata and Thro do not explicitly disclose,

- *if said customer, responsive to said notifying, signals for immediate delivery of said message to said customer station, immediately delivering said message to said customer station;*

Chang teaches,

- *if said customer, responsive to said notifying, signals for immediate delivery of said message to said customer station, immediately delivering said message to said customer station;* (Chang, col.6, lines 54-67)

Chang discloses that *"after the pull consumer decides to pull the real event after having first examined the notice or 'Notified Message', the particular event is located in the message queue, and then delivered immediately to the pull consumer, bypassing higher priority events"* (Chang, col.6, lines 63-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Chang with the teachings of

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Kobata and Thro to further enhance Kobata and Thro's *"smart internet delivery system"* by allowing for the *"[immediate delivery] to the pull customer, bypassing higher priority events"*, the particular event, which the customer decided to examine first after *"[examining] the notice or 'Notified Message'"* (Chang, col.6 lines 63-67). Hence, *"if the user decides to pull a specific event, the user should not have to wait for all the events with a higher priority to be received before the user can receive the specific event chosen"* (Chang, col.6, lines 60-63).

5. With regard to claims 2 and 8, Kobata, Thro, and Chang disclose,

See *claims 1 and 7* rejection as detailed above.

Furthermore, Thro and Chang teach,

- *wherein certain classes of messages also have a preemption level, wherein if said customer station receives a message with a preemption level, the reception of said another message is interrupted if the precedence level of the received message is above a precedence level of said another message currently being received by the customer, unless the customer, responsive to said notifying, signals for a deferral of delivery of said message.* (Thro, col.7, lines 1-67; Chang, col.6, lines 54-67)

6. With regard to claims 5 and 11, Kobata, Thro, and Chang disclose,

See *claims 1 and 7* rejection as detailed above.

Furthermore, Chang teaches,

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- *wherein the step of notifying comprises the step of: notifying only if the received message is at or above a pre-determined precedence level. (Chang, col.4, lines 16-42)*

Response to Arguments

7. Applicant's arguments with respect to *claims 1-2 and 5* have been considered but they are moot in view of the new grounds of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Duong whose telephone number is 571/272-3911. The examiner can normally be reached on M-F 7:30AM - 4:00PM. If attempts to reach the

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examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on 571/272-6159. The fax phone numbers for the organization where this application or proceeding is assigned are 703/872-9306 for regular communications and 703/872-9306 for After Final communications.

Thomas Duong (AU2145)

May 24, 2005

A handwritten signature in cursive script, appearing to read "v. martin-wallace".

VALENCIA MARTIN-WALLACE
SUPERVISORY PATENT EXAMINER